

provisions of the Delhi Rent Control Act (hereinafter referred to as 'DRCA') are applicable. In view of Section 50 of the DRCA suit of the plaintiff is liable to be dismissed. Receipt of legal notice was admitted; it was however stated that the tenancy has not been legally or validly terminated.

4. Issues were framed by the Court. Thereafter an application under Order XXII Rule 6 of the Code of Civil Procedure (hereinafter referred to as 'the Code') had been filed by the plaintiff praying for a decree on the admissions made by the defendant in his written statement. Reply to the said application had been filed contesting it.

5. The trial judge vide the judgment and decree dated 17.10.2006 had decreed the suit of the plaintiff on the admission of the parties. Relevant extract of which read as under:

"The perusal of WS makes it clear that the preliminary objection is there that the suit premises situated at Badarpur, New Delhi where DRC Act is applicable and therefore suit is barred under section 50 of DRC Act, there is no cause of action and suit has not been properly valued for the purposes of court fees and jurisdiction and suit is hopelessly barred by time and is bad for mis joinder and non joinder of necessary parties as the premises in dispute was let out by plaintiff no. 2 and plaintiff no.1 has no concern and defendant cannot be evicted being the lawful contractual tenant without violation of any ground under the DRC Act and tenancy of defendant has not been correctly shown in site plan as verandah in front of shop and the roof of the shop also forms the part of tenancy of defendant and plaintiff has no locus standi to file the present suit and while reply on merits admitted the relationship of landlord and tenant between the plaintiff no.2 and defendant, admitted the rate of rent as Rs. 675/- in suit bearing no. 398/02/01 and Rs. 535/- in another suit bearing no. 399/02/01 and though service of notice dt. 22.01.2001 terminating the tenancy has not been denied but further alleged that since DRC Act is applicable therefore said notice is illegal and thus court has no jurisdiction to try the present matter for the recovery of possession.

In support of their oral contentions, parties have relied upon the following documents:

i. Plaintiff has relied upon certified copy of the plaint of the suit bearing no. 11/2001 wherein defendant herein in suit bearing no. 398/02/01 has shown his address as under:

Devki Nandan Goel S/o Shri Chotey Lal
Shop bearing Pvt. Shop no.B-8, situated at
Property no. 8-B, Jaitpur Road, Village Molarband,

ND-44

And another defendant namely Rajender Soni has shown his address in suit bearing no. 401/2000 who is the defendant in suit bearing no. 399/02/01 as under:

Rajender Soni S/o Shri Ramroop Soni
Shop bearing no. B-8, situated at
Property no. 8-B, Jaitpur Road, Village Molarband,
ND-44

ii. Original rent receipt dt. 05-4-2000 showing the address at Molarband, Jaitpur Road, ND-44 and another receipt dt. 07.05.1999 filed in other suit showing the same address.

iii. Certified copy of petition filed on behalf of present defendant under section 31 of Punjab Relief and Indebtness Act, 1934 showing the same address as in the aforesaid suit and khatoni of the year 1976-77 and of the year 1972-73 wherein the khasra no. of suit property, i.e. 446 has been shown in revenue village of Molarband.

On the other hand, Ld. Counsel for defendant has placed reliance upon documents as under:

i. Certificate issued by plaintiff no.2 showing defendant's address as B-8, Molarband, Jaitpur Road, Badarpur, ND for the purposes of electricity connection

ii. A copy of notification of the year 1966 has been filed from the Delhi Gazette Extraordinary and part IV of the notification no. F249 (65 Lsg) dt. 03.06.1966 makes it clear that village Badarpur at entry no. 33 has been urbanised for the purposes of applicability of DRC Act.

Ld. Counsel for plaintiff placed reliance upon following judgments:

i. 2002(vii) AD Delhi 185

ii 2003(i) AD Delhi 178

iii 2004(ii) AD Delhi 197

iv 2001(ii) AD Delhi 178

v 2005(iv) AD Delhi 541

vi 2004(vi) AD Delhi 537

Ld. Counsel for defendant placed reliance upon judgment reported in 129 (2006) DLT 755 DB.

Admittedly the relationship of landlord and tenant exists between plaintiff no.2 and defendant, rate of rent is admitted and service of legal notice is admitted and the question remains to be decided as to whether the property in dispute falls in the area where the DRC Act is applicable or not and validity of notice and extent of tenancy of termination and in this connection it has been argued on behalf of defendant that plaintiff no. 1 has no right, title or interest in suit property and it has been further argued that during the course of evidence it has been admitted by the plaintiff no. 1 that one of the wall of property in question is adjacent to Badarpur Village and I have perused the cross of PW1 dt. 17.1.2005 and PW1 specifically denied that suit property falls in the revenue estate of Badarpur and notification aforesaid makes it clear that revenue village Badarpur has been urbanised but there is no mention of village Molar Band and on the other hand, contention of Ld. Counsel for plaintiff is well founded that defendants herein themselves have shown their address in their suits filed for the relief of injunction and in their petition for depositing the rent before Ld. SCJ as Village Molar Band and this fact has not been denied by defendant in the entire reply to the applications or in

the written submissions and it is true that the certificate issued in favour of the defendants for the purposes of electricity connection address of the defendant is shown as Molar Band, Jaitpur Road, Badarpur, New Delhi but to my mind that does not mean that the property falls in Badarpur instead of Molar Band and this fact is clear from the cross examination of PW1 wherein suggestion given on behalf of defendant to the plaintiff no.1/PW1, PW1 has testified that "it is incorrect to suggest that documents such as GPA, Agreement to sell etc. which are Ex.PW2 (colly) does not pertain to the property B-8, Molar Band, Post Office Badarpur, Jait Pur Road, New Delhi-44 and thus, even the aforesaid suggestion makes it clear that Badarpur village is shown as post office to the revenue village of Molar Band and thus above discussion makes it clear that on the face of it, it has been shown that suit property is situated in revenue village of Molar Band and the objection taken by defendant is only for the sake of objection having no merits that the property is situated in Badarpur village.

In view of the aforesaid discussion, it is clear that since the property is not situated in Badarpur village but is stated in Molar Band village and said fact has been established from documents filed by defendant himself viz. Certified copy of plaint of the previously instituted suit, petition under section 31 of the Punjab Indebtness Act and even the receipt which was put in the cross and has been mark as Ex.PW1/D1 wherein the address of the suit property has been shown as Molar Band and thus to my mind, the notice given by plaintiff is valid one as there is no tenancy in writing on the yearly basis and thus, tenancy can be termed as month to month tenancy which can be terminated after giving the fifteen days notice which in fact in the present case has been given and have been admitted by the defendant and so far as extent of tenancy is concerned the allegations regarding the measurement in the plaint in the present suit is clearly the same as has been measured by the present defendant in their suit and, thus, it cannot be said that there is no clause in the legal notice and there is unambiguous admission on behalf of defendants regarding the relationship of landlord between plaintiff no.2 and defendant, rate of rent and service of legal notice and otherwise from documents filed on behalf of parties that suit property is situated in Molar Band village.

In the light of aforesaid discussion, this court is of the opinion that application filed on behalf of plaintiff is well founded and having merits, hence, applications in hand is allowed and in consequence thereof, suit of plaintiff is partly decreed for decree of possession as per site plan."

6. This finding was upheld in the impugned judgment on

7.8.2008. The finding returned reads as follows:

"4. The second objection is that the premises in question is situated within the area where the Delhi Rent Control Act has its application, and that the jurisdiction of Civil Court is barred in view of provision of Section 50 of the DRC Act. The appellant/defendant has refuted that the suit property is situated at Molarband. He contends that the same is situated at Badarpur where the DRC Act is applicable. In any event it is contended by the ld. counsel for the appellant that is could only be proved through evidence. The Ld.Trial court appraised various documents which are admitted documents and did not require to be adduced in evidence and proceeded to adjudicate on this issue as well. Reliance was placed on the appellant's own cases where he had reflected his address as Shop No.B-8, Jaitpur Road, Village Molarband, New Delhi-44. The other

defendant in a connected case had also reflected the same address in suit no.11/01 filed by him. Ld. trial court also took into consideration the original rent receipt and certified copies of the petitions filed by the present defendant and their reliance on the khatoni filed by them in the year 1976-77 where the suit property has been described as khasra no.446/2, in the revenue village of Molarband.

5. On appraisal of the facts of the case and taking into consideration that the tenant landlord relationship existed between plaintiff no.2 and the defendant, the admitted rate of rent and service of legal notice, the suit of the respondent was decreed in their favour after coming to the conclusion that the suit property fell within the area where the DRC Act was not applicable. The Ld.trial court arrived at this conclusion on the basis of the appellant's own documents in their various litigations. The fact that the village Molarband is not notified for the purpose of DRC is an admitted fact."

7. Learned counsel for the appellant has submitted that the findings in the impugned judgment are perverse. Issues had been framed and the trial was in progress when the present application under Order XXII Rule 6 of the Code had been filed. In these circumstances, it was an illegality on the part of the court to have passed an order on admissions. The appellant had disputed the validity of the legal notice; attention has been drawn to the preliminary objection passed in the written statement. Reliance has been placed upon a judgment of the Supreme Court reported in AIR 2003 SC 3995 Parwati Bai vs. Radhika to substantiate his submissions. This judgment in fact comes to the aid of the respondent. Para 6 clearly recites that the defendant had not raised any specific objection to the validity of the notice; so also is the case in hand.

8. In a judgment reported in (2006) 9 SCC 216 Dharam Pal vs. Harbans Singh, the Supreme Court has held

"Law is well settled that an objection as to the invalidity or insufficiency of notice under Section 106 of the Transfer of Property Act should be specifically raised in the written statement failing which it will be deemed to have been waived., the only objection taken in the written statement is that the notice issued by the plaintiff was "illegal, null and void and ineffective upon the right of the defendant".

There was no specific plea about its invalidity.

9. Two fact finding Courts had held that the relationship of landlord-tenant stood admitted between the parties; the receipt of the legal notice dated 22.1.2001 also stood admitted. A mere bald assertion in the written statement that the notice had not validly terminated the tenancy is not by itself sufficient. Arguments addressed today before this court is that the unit of the defendant was a manufacturing unit entitling him to a 6 month notice. This has nowhere been pleaded either in the written statement or in the reply to the application under Order XXII Rule 6 of the Code. This argument now raised is clearly an after-thought. It deserves no merit. Apart from the fact that the landlord-tenant relationship stood admitted, the receipt of the legal notice dated 22.1.2001 was also not disputed. Perusal of the same shows that it clearly fulfills the twin requirements of Section 106 of the Transfer of Property Act which stand met with.

10. The question of the applicability of the DRCA had also been decided on admissions of the parties. The courts below had relied upon the admitted documentary evidence led by the parties whereby the defendant had admitted that he is a resident of Molar Band which is admittedly outside the purview of the DRCA; what falls within the purview of the DRCA is village Badarpur; documentary evidence appended along with the pleadings had evidenced that the defendant was residing in village Molar Band. The admission of the defendant was clear, unambiguous, unqualified and cogent. It had passed the test of the requirements of an 'admission' under Order XXII Rule 6 of the Code.

11. This is a second appeal. After its admission the following substantial question of law had been formulated. It inter alia reads

as follows:

“Whether the Court below was justified in concluding that the bar of Section 50 of the Delhi Rent Control Act does not apply in respect of the suit property?”

12. As noted hereinabove, the admissions made by the defendant in his pleadings and in the documents annexed along with the pleadings which were admitted documents as they were documents relating to earlier suit proceedings between the parties (certified copies) i.e. bearing Suit no.11/2001, defendant had admitted that he is resident of B-8, Jaitpur, Village Molar Band.

13. Under Order XXII Rule 6 of the Code an admissions can be made either in the ‘pleadings’ or ‘otherwise’. The word ‘otherwise’ includes the documents appended along with the pleadings.

14. It is evident that the provisions of the DRCA were not applicable as the suit property fell within Village Molar Band which was admittedly outside the purview of the DRCA. On this count also the arguments of the appellant must fail.

15. There is no infirmity in the impugned judgment. Appeal is without any merit; it is dismissed.

INDERMEET KAUR, J.

NOVEMBER 18, 2010
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